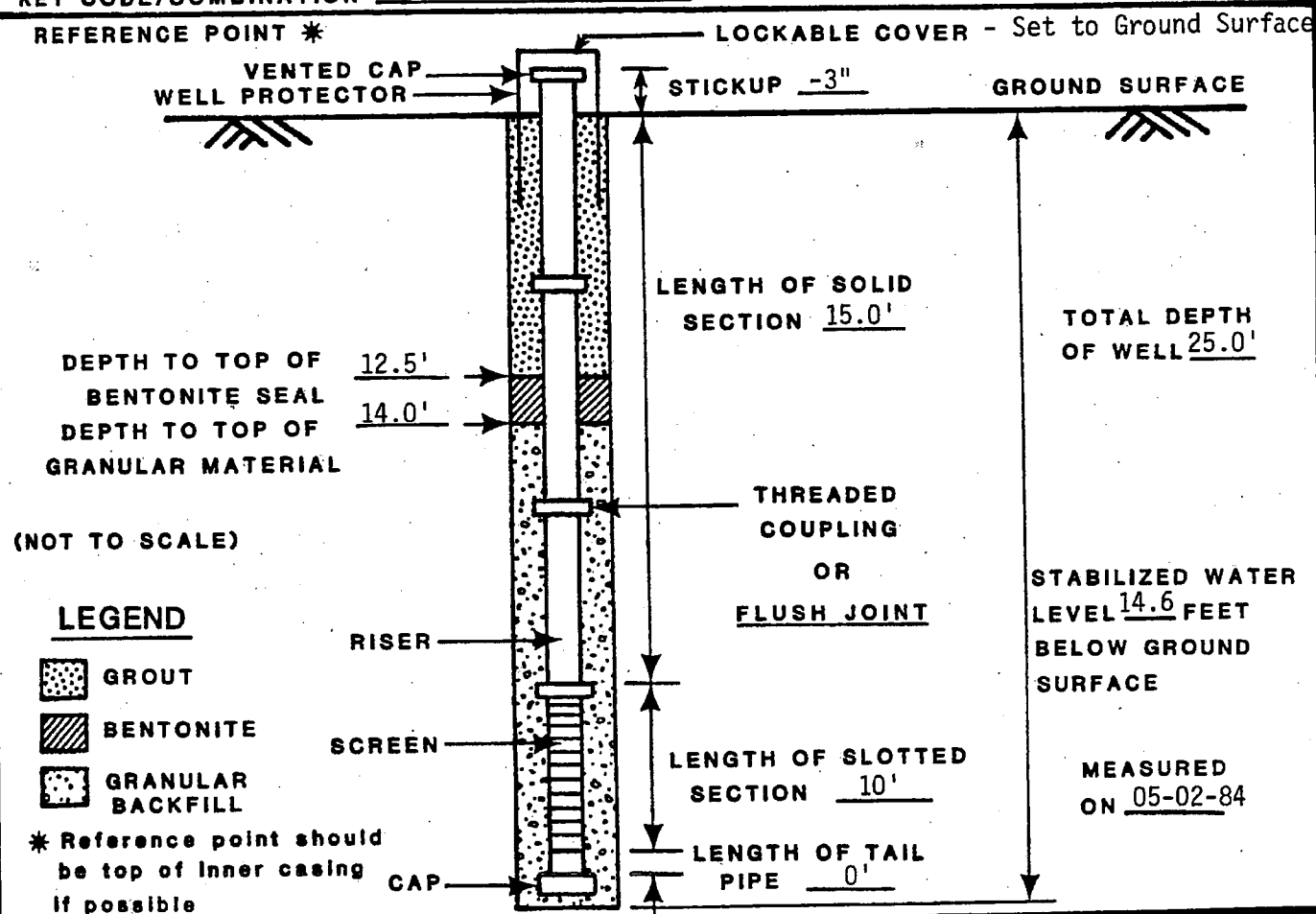


TYPE II MONITORING WELL INSTALLATION RECORD

JOB NAME <u>Fill Em Fast</u> WELL NUMBER <u>W-3</u> LOCATION <u>Roseville, California</u> GROUND SURFACE ELEVATION <u>97.1'</u> GRANULAR BACKFILL MATERIAL <u>Quartz Sand</u> SCREEN MATERIAL <u>PVC</u> RISER MATERIAL <u>PVC</u> DRILLING TECHNIQUE <u>Hollow Stem Auger</u> BOREHOLE DIAMETER <u>6"</u> LOCK BRAND <u>Bolted</u> KEY CODE/COMBINATION <u>N/A</u>	JOB NUMBER <u>HT-1206-84W</u> INSTALLATION DATE <u>04/17/84</u> 100' Station REFERENCE POINT ELEVATION <u>Datum</u> SLOT SIZE <u>0.040"</u> SCREEN DIAMETER <u>2"</u> RISER DIAMETER <u>2"</u> DRILLING CONTRACTOR <u>P.C. Exploration</u> LAW ENGINEERING <u>P. Fitzwater</u> FIELD REPRESENTATIVE SIZE/MODEL <u>N/A</u>
---	---



LAW ENGINEERING TESTING COMPANY
HOUSTON TEXAS

TEST BORING RECORD

|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|

REMARKS:

Monitoring Well Completed in Soil Test Borehole

Elevations Relative to a 100' Datum Assumed on Site

DRILLED BY P.C. Exploration
 LOGGED BY P. Fitzwater
 CHECKED BY P. Fitzwater

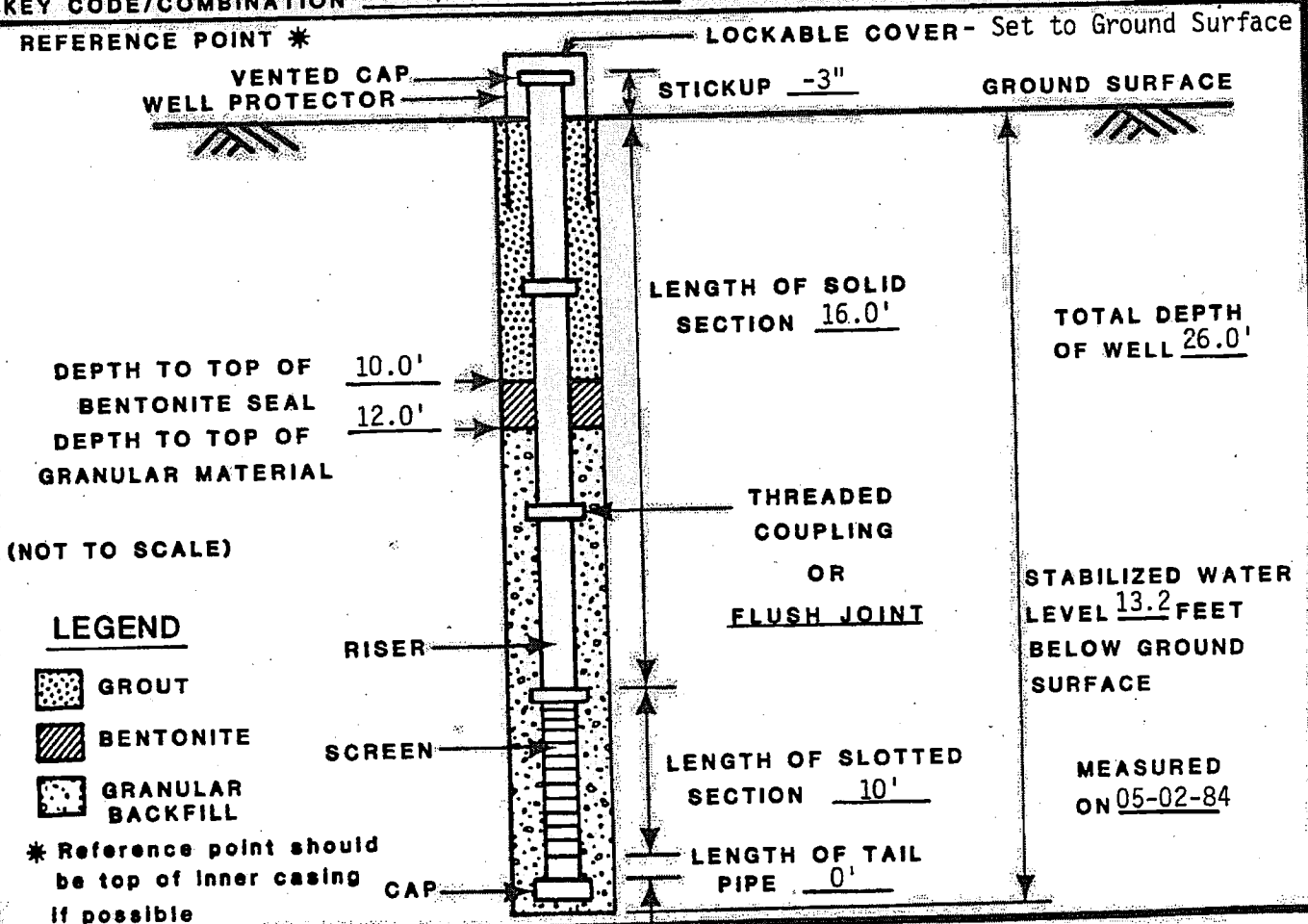
BORING NUMBER W-4
 DATE STARTED 04/17/84
 DATE COMPLETED 04/17/84
 JOB NUMBER HT-1206-84

LAW ENGINEERING
 HOUSTON, TEXAS

TYPE II MONITORING WELL INSTALLATION RECORD

JOB NAME <u>Fill Em Fast</u>	JOB NUMBER <u>HT-1206-84W</u>
WELL NUMBER <u>W-4</u>	INSTALLATION DATE <u>04/17/84</u>
LOCATION <u>Roseville, California</u>	100' Station <u>Datum</u>
GROUND SURFACE ELEVATION <u>95.2'</u>	REFERENCE POINT ELEVATION <u>Datum</u>
GRANULAR BACKFILL MATERIAL <u>Quartz Sand</u>	SLOT SIZE <u>0.040"</u>
SCREEN MATERIAL <u>PVC</u>	SCREEN DIAMETER <u>2"</u>
RISER MATERIAL <u>PVC</u>	RISER DIAMETER <u>2"</u>
DRILLING TECHNIQUE <u>Hollow Stem Auger</u>	DRILLING CONTRACTOR <u>P.C. Exploration</u>
BOREHOLE DIAMETER <u>6"</u>	LAW ENGINEERING <u>P. Fitzwater</u>
LOCK BRAND <u>Bolted</u>	FIELD REPRESENTATIVE <u>N/A</u>
KEY CODE/COMBINATION <u>N/A</u>	SIZE/MODEL <u>N/A</u>

REFERENCE POINT *



LAW ENGINEERING TESTING COMPANY
HOUSTON TEXAS



Linda S. Adams
Secretary for
Environmental
Protection

California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair



Arnold
Schwarzenegger
Governor

Sacramento Main Office

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>

2 May 2008

Mr. Craig Johns
California Resource Strategies, Inc
1115 – 11th Street, Suite 100
Sacramento, Ca 95814

**FORMER EZ-SERVE, 1017 DOUGLAS BOULEVARD, ROSEVILLE, PLACER
COUNTY, LUSTIS # 310312**

Mr. Johns

I just wanted to follow-up on our phone conversation of 30 April in which we discussed your concerns and those brought up by Mr. Darren Stroud in his letter of 29 April 2008 (copy enclosed). Primary points of discussion included:

1. The request that Regional Board staff either rescind or "stay" CAO No R5-2008-0702 or amend it so that VRG has more time to comply than the other named Responsible Parties.

Board staff reviewed the available information, conferred with counsel and it is our opinion that VRG is properly named as a responsible party in the CAO and there is no compelling need to rescind or amend the CAO. Order No. 22 of the CAO provides that the Dischargers may request an extension of any of the deadlines. All requests for extensions need to include appropriate documentation supporting/explaining the need for the delay.

2. That an evidentiary hearing be scheduled before the CVRWQCB on either June 13th or 14th.

Both you and Mr. Stroud indicate it is your intentions to file an appeal of the CAO with the State Water Resources Control Board should request #1 above be denied. Such an appeal is the proper recourse for the issued CAO, and, as such, a hearing before the CVRWQCB has not been scheduled.

As we discussed, Board staff is available to meet and discuss the CAO, progress of work and other elements of the site. The one caveat we normally place on such meetings involving enforcement cases is that the other named responsible parties be given a reasonable opportunity to attend the meeting if

California Environmental Protection Agency

Recycled Paper

EXHIBIT F

1017 Douglas Blvd
Roseville, Placer County

- 2 -

2 May 2008

the intent is to discuss assignment of liability/responsibility. This is to give all parties equal opportunity to present and respond to information.

If you have any questions or would like to schedule a meeting please contact Paul Sanders of my staff at (916) 464-4817, or you can contact me at (916) 464-4834.

Original signed by

Brian Newman
UST Program Manager

Enclosures

cc/enc Darren Stroud, Valero, San Antonio, Tx
Jack Ceccarelli, RPMS, Tampa FI
John McIntosh, JEM1, LLC, Roseville
Mark Bradley, Office of Enforcement, SWRCB, Sacramento

PROOF OF SERVICE

The undersigned declares:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action; my business address is c/o Nossaman, Guthner, Knox & Elliott, LLP, 445 South Figueroa Street, 31st Floor, Los Angeles, CA 90071

ON MAY 5, 2008, I SERVED THE FOREGOING

PETITION FOR REVIEW OF ORDERS R5-2008-0702 AND R5-2008-0809

on parties to the within action by placing () the original (X) a true copy thereof enclosed in a sealed envelope, addressed as follows:

Pamela Creedon, Executive Officer
California Regional Water Quality Control
Board for the Central Valley
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

Jeannette L. Bashaw, Legal Secretary
State Water Resources Control Board
Office of Chief Counsel
1001 "I" Street, 22nd Floor
Sacramento, CA 95814

Jack DelConte, Assistant Executive Officer
California Regional Water Quality Control Board for the Central Valley
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

(X) (By Overnight Service) I served a true and correct copy by overnight delivery service for delivery on the next business day. Each copy was enclosed in an envelope or package designated by the express service carrier; deposited in a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf; with delivery fees paid or provided for; addressed as shown on the accompanying service list.

(X) (By Electronic Service) By emailing true and correct copies to the persons at the electronic notification address(es) shown on the accompanying service list. The document(s) was/were served electronically and the transmission was reported as complete and without error.

Executed on May 5, 2008.

(X) (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Mina Munoz

PROOF OF SERVICE

The undersigned declares:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action; my business address is c/o Nossaman, Guthner, Knox & Elliott, LLP, 445 South Figueroa Street, 31st Floor, Los Angeles, CA 90071

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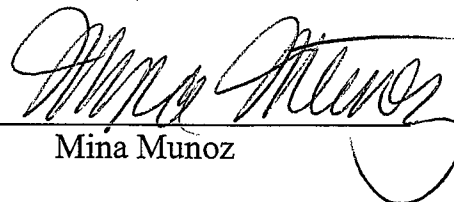
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Executed on May 5, 2008.

(X) (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


Mina Munoz

1 THE VALERO COMPANIES
2 DARREN W. STROUD, Esq. (SBN 210350)
3 One Valero Way
4 San Antonio, TX 78249
5 Telephone: (210) 345-2871
6 Facsimile: (210) 353-8363

7 NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
8 BYRON P. GEE, Esq. (SBN 190919)
9 445 South Figueroa Street, 31st Floor
10 Los Angeles, CA 90071-1602
11 Telephone: (213) 612-7800
12 Facsimile: (213) 612-7801

13 Attorneys for Petitioner
14 VRG PROPERTIES COMPANY

15 **BEFORE THE CALIFORNIA**
16 **STATE WATER RESOURCES CONTROL BOARD**

17 In the Matter of

18 CLEANUP AND ABATEMENT ORDER
19 NO. R5-2008-0702 FOR RESTRUCTURE
20 PETROLEUM MARKETING SERVICES
21 INC; VRG PROPERTIES COMPANY, AND
22 JEM1, LLC. FORMER "FILL'EM FAST";
23 1017 DOUGLAS BOULEVARD,
24 ROSEVILLE, PLACER COUNTY; CA AND
25 MONITORING AND REPORTING
26 PROGRAM ORDER NO. R5-2008-0809;
27 CALIFORNIA WATER CODE SECTION
28 13267 FOR RESTRUCTURE PETROLEUM
MARKETING SERVICES INC; VRG
PROPERTIES COMPANY AND JEM1, LLC.
FORMER "FILL'EM FAST"; 1017
DOUGLAS BOULEVARD, ROSEVILLE,
PLACER COUNTY

VRG PROPERTIES COMPANY,

PETITIONER

REQUEST No.

REQUEST TO STAY CENTRAL VALLEY
REGIONAL BOARD ORDERS NO. R5-2008-0702
AND R5-2008-0809

[Title 23 of the California Code of Regulations
("CCR") § 2053]

DATE REQUEST FILED: MAY 5, 2008



1 **TO THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD:**

2 **I. INTRODUCTION**

3 **A. Petitioner VRG Properties Company is Entitled to Relief and will be Substantially**
4 **Harmed Unless Relief is Granted**

5 Petitioner VRG Properties Company ("VRG") seeks herein a stay of Cleanup and Abatement
6 Order No. R5-2008-0702 (the "CAO") and Monitoring and Reporting Program Order No R5-2008-0809
7 (collectively, the "Orders") issued by the Regional Water Quality Control Board—Central Valley
8 ("Regional Board") for the property located at 1017 Douglas Boulevard, Roseville, California
9 ("Roseville Site"). The Orders were served on VRG—without any prior notice—on or about April 7,
10 2008.¹ Specifically, VRG requests, in accordance with Title 23 of the California Code of Regulations
11 ("CCR") § 2053, that the State Water Resources Control Board ("State Board") stay those portions of
12 the Orders that require VRG to perform any action on or before August 13, 2008, including those
13 portions of the Orders requiring VRG to take the following actions on or before June 6, 2008, to:

- 14 1. Prepare a detailed site chronology (CAO § 3, page 8);
- 15 2. Complete and prepare a report on the results of the "HVDPE" and "AS" 60-day study
16 utilizing CalClean, Inc. arising out of a February 14, 2008 Regional Board staff directive
17 to RPMS. (CAO § 4, page 8);
- 18 3. Develop and implement a "modified Corrective Action Plan" (CAO § 4, page 8);
- 19 4. Develop and implement a work plan to conduct a human health risk assessment at the
20 Roseville Site (CAO § 4, page 10);
- 21 5. Develop and submit a Public Participation Plan; and
- 22 6. Conduct sampling, monitoring and reporting at the Roseville Site.

23 VRG respectfully requests that the stay remain in place until such time as VRG's Petition for
24 Review of the Orders is resolved by the State Board, and the State Board clarifies whether substantial
25

26 _____
27 ¹ It appears that the Valero Energy Company mail room staff received a copy of the CAO on or about April 7,
28 2008, but the CAO did not reach the environmental department staff within VRG until April 11, 2008. Regional
Board staff provided no advanced notice to VRG that the Orders were about to be issued.

1 evidence in the exceedingly limited administrative record supports the findings, timelines and cleanup
2 requirements contained in the CAO.

3 The Orders require VRG to complete all of these tasks listed above in the next few weeks with
4 respect to the Roseville Site. VRG has no current legal right of access to the Roseville Site, is not
5 currently familiar with the Site, and has not had any contact with the Site attributable to VRG since
6 VRG's predecessor in interest, Autotronic Systems Incorporated ("ASI"), transferred its leasehold
7 interest in the Site to EZ-Serve, Inc (EZ-Serve) in 1985. VRG was named a responsible party at the
8 Roseville Site, which is a designation that VRG disputes in the accompanying Petition for Review, for
9 the first time on April 3, 2008 in the Orders, and each of the above referenced tasks, individually or
10 cumulatively, is predicted by VRG's consultants to require many months to complete. The State Board
11 is unlikely to hear VRG's petition prior to the June 6, 2008 compliance deadline because the Water
12 Code allows the State Board two hundred seventy days to rule on VRG's Petition. (*See* 23 CCR
13 § 2050.5(b)). If the Orders, which have not yet been reviewed by the Regional Water Quality Control
14 Board for the Central Valley Region ("Regional Board") or its Executive Officer,² are not stayed, VRG
15 will be in violation of the Orders within only *five* weeks because the requirements compliance deadlines
16 established in the Orders are wholly infeasible as applied to VRG. (Declaration of Darren W. Stroud
17 ("Stroud Decl.") at ¶6, submitted herewith and incorporated by reference herein).³

20 ² VRG has been unsuccessful in obtaining any kind of formal review or evidentiary evaluation of the CAO
21 despite robust efforts to work with Regional Board staff to develop a workable compliance plan and feasible
22 timeline. (*See, e.g.*, April 29, 2008 Letter from Darren W. Stroud, Environmental Counsel, VRG, to Ms. Pamela
23 Creedon, Executive Officer, Central Valley Regional Water Quality Control Board, (attached to the Petition as
24 Exhibit B, and incorporated herein by reference))(the "April 29 Creedon Letter"). In contravention of this court's
25 decision in *Matter of the Petition of BKK Corp.*, California State Water Resources Control Board, Order No. WQ
26 86-13 at p.16 (1986), the Executive Officer informed VRG that she was not permitted to meet with VRG to
27 discuss the Orders, citing the State Board's new "Separation of Functions Protocol." Moreover, Regional Board
28 staff, based on no apparent legal authority—delegated or otherwise—unilaterally denied VRG's request for a
hearing before the Regional Board—stating, again with no legal support, that VRG's sole remedy to address the
objectionable findings and compliance time schedule provisions in the Orders is an appeal to the State Board.
(*See* May 2, 2008 Letter from Brian Newman, UST Program Manager, Central Valley Regional Water Quality
Control Board, to Craig Johns and Darren Stroud (attached to the Petition as Exhibit F, and incorporated herein by
reference) (the "Newman May 2 Letter"))).

³ A request for a stay shall be supported by a declaration under penalty of perjury of a person or persons having
knowledge of the facts alleged. *See* 23 CCR § 2053.

1 **B. Factual Background**

2 The subject of the Orders is the property located at the Roseville Site. Petroleum related
3 constituents were discharged to the soil and have migrated to the groundwater underneath the site.
4 There is no evidence that the petroleum related constituents are a current threat to any existing or future
5 beneficial use, and there is evidence in the CAO itself that cleanup activities and natural attenuation has
6 significantly reduced risk that the contamination affecting the Roseville Site may pose to the
7 surrounding community and waterbodies. (CAO § 8, page 3).

8 VRG is the successor in interest to ASI, the former tenant at the Roseville Site until 1985.⁴ In
9 1985, well before the date that Valero Energy Corporation ("Valero") became the parent entity for ASI,
10 ASI transferred EZ-Serve, and EZ-Serve assumed all of ASI's rights, duties, and liabilities as a tenant
11 and operator of the Roseville Site, including expressly and unequivocally accepting all ASI's
12 environmental liabilities and duties related to the Roseville Site and to ASI's operations at the Site.
13 Further, EZ-Serve, which is now succeeded in interest by Restructure Petroleum Marketing Services
14 ("RPMS"), granted an express indemnity for all environmental liability associated with the Roseville
15 Site to ASI, and ASI's successors and assigns, which now include Valero and VRG. *See* November 15,
16 2007 Letter from Darren W. Stroud, Environmental Counsel, VRG, to Mr. Brian Newman and Mr. Paul
17 Sanders, Underground Storage Tank Division Central Valley Regional Water Quality Control Board,
18 (attached to the Petition as Exhibit A), and incorporated herein by reference; (Stroud Decl. at ¶4)). As a
19 result of their discharge and their contractual obligations, EZ Serve, and its successor in interest RPMS,
20 have conducted all of the site investigation, monitoring, sampling, characterization, and remediation
21 efforts at the Roseville Site since at least 1992. To date they have obtained approximately \$500,000 in
22 cleanup funding from the UST Cleanup Fund used to undertake investigation, characterization,
23 monitoring and cleanup activities at the Roseville Site, and RPMS is potentially eligible for another
24 \$1,000,000 from the Fund.

25
26
27
28 ⁴ ASI, and subsequently EZ-Serve leased the Roseville Site from Raymond and Marjorie Lieser, who are succeeded
in fee interest by JEM1, LLC ("JEM1"), current fee owner of the Roseville Site.

1 According to Regional Board staff, although the Board considers RPMS as the primarily
2 responsible party ("PRP") to perform site investigation, monitoring, sampling and cleanup activities at
3 the Roseville Site, VRG was named as a Discharger under the Orders, in large measure, as a means of
4 putting pressure on the apparently delay-prone RPMS (*see e-mail from Paul Sanders to Darren Stroud*
5 dated October 26, 2007, attached to the Petition as Exhibit C, and incorporated herein by reference
6 ("Paul Sanders Email"). The designation of RPMS as primarily responsible for cleanup of the Roseville
7 Site is appropriate because RPMS is the direct successor in interest to EZ-Serve, the entity that assumed
8 all environmental responsibility and liability for the Roseville Site in 1985, and the entity that was
9 responsible for the major release of hydrocarbons discovered at the site in 1992 (the release that has
10 most prominently contributed to the current "condition of pollution" on the Roseville Site). (See CAO
11 §§ 3, 5, and 6, pages 1-2).⁵ Since taking over the Site from EZ-Serve, RPMS has been funding and
12 performing investigation, monitoring, characterization and cleanup duties at the Roseville Site as PRP,
13 albeit perhaps more slowly than desired by Regional Board staff. (*See, e.g., Paul Sanders E-mail*). The
14 Orders indicate that contamination levels have fallen significantly at the Roseville Site over time, and
15 there is no indication in the Orders that any surface or groundwater beneficial use is currently imperiled
16 by the existing petroleum constituents within the soil and groundwater.

17 **II. VRG IS ENTITLED TO A STAY OF THE ORDERS AND WILL BE SUBSTANTIALLY**
18 **HARMED IF THE STAY IS NOT ISSUED**

19 Pursuant to 23 CCR § 2053, the State Board must stay the Orders if VRG alleges facts and
20 produces proof of all of the following:

- 21 1. There will be substantial harm to VRG or to the public interest if a stay is not granted;
- 22 2. There will be a lack of substantial harm to other interested persons and to the public
23 interest if a stay is granted; and,
- 24 3. There is a substantial question of fact or law regarding the disputed action.

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26 ⁵ EZ-Serve was the operator responsible for ongoing releases from three 10,000-gallon Underground Storage
27 Tanks (UST) located on the Roseville Site for a period of years, which releases were not discovered until 1992.
28 By contrast, according to the CAO, ASI was responsible for a limited release associated with a leak in a fuel line
over the course of a three month period, which did not exceed 698 gallons.

1 As discussed in the Petition and summarized below, VRG has alleged facts and submitted
2 evidence sufficient to satisfy the regulatory elements above, and it is entitled to a stay of the Orders until
3 the State Board takes action upon VRG's Petition.

4 **A. The Orders Naming VRG As A Responsible Party And Implementing An Entirely**
5 **Infeasible And Unreasonable Compliance Schedule Will Wrongfully Harm VRG**
6 **And The Public Interest**

7
8 **1. It Is Physically Impossible For VRG To Comply With All Of The**
9 **Requirements Of The Orders—Thereby Exposing VRG To Great Harm In**
10 **The Form Of Potential Criminal And Civil Enforcement and Penalties.**

11 Compliance with the Orders in their current form will cause substantial harm to VRG because it
12 is simply not possible for VRG, an entity with no current legal right of access to the Site, no current site
13 familiarity, and has no knowledge of any contact between ASI and the Site since 1985, to comply with
14 the tasks indiscriminately assigned to it by Regional Board staff on or before the compliance deadline of
15 June 6, 2008. (*See* Stroud Decl. at ¶ 7). As but one example of the physical impossibility of compliance
16 with the CAO in its current form, VRG could not comply with CAO § 4, page 8, requiring completion of
17 a WorkPlan to Use CalClean Inc., even with immediate and unlimited site access and limitless
18 resources. Compliance with CAO § 4, page 8 requires a minimum of 60 days to perform High Vacuum
19 Dual Phase Extraction ("HVDPE") testing utilizing CalClean, Inc., and the testing must be followed by
20 preparation and submission to Regional Board Staff of a report that details the results of the completed
21 test and includes a modified corrective action plan ("CAP"). Because the Regional Board staff chose
22 not to reveal its intention to issue the Orders until after they became final, VRG was not aware of that
23 the Orders' had been formally in enforceable form until April 11, 2008, when the Valero environmental
24 personnel received them. (*Stroud* Decl. at ¶ 5.) Compliance with CAO § 4, page 8 requires 60 days of
25 testing at an absolute minimum. Thus, even if VRG commenced work at the Roseville Site the very
26 instant it received notification of the Orders on April 11, 2008, and CalClean, Inc. agreed to work for
27 sixty straight days without pause, and VRG then completed and submitted the report and modified CAP
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1 one second after the conclusion of testing on the 60th day, VRG would still be out of compliance with
2 CAO § 4, page 8 *because the date would be June 11th, five days after the regulatory deadline of June*
3 *6, 2008.*

4 Subsequent discussions with Regional Board staff reveal that they are not concerned whether the
5 CAO sets a physically impossible schedule, nor do they care whether the infeasible schedule potentially
6 exposes a party, acting in good faith to comply with the CAO, to criminal and civil penalties. (Newman
7 May 2 Letter; Stroud Decl. at ¶6). Such a result is inconsistent with State Board decisions requiring that
8 CAOs contain feasible timelines, (*see In the Matter of the Petition of BKK Corp.*, California State Water
9 Resources Control Board, Order No. WQ 86-13 at p.16 (1986)), and is arbitrary and capricious under the
10 California Administrative Procedures Act. Further, the Orders were issued without providing an
11 opportunity to VRG to be heard by the Regional Board, and therefore violate VRG's procedural due
12 process rights. (*See Horn v. County of Ventura*, 24 Cal.3d 605, 612 (1979) ("Due process principles
13 require reasonable notice and opportunity to be heard before governmental deprivation of a significant
14 property interest.")).

15 **2. VRG Is Harmed Because It Is Improperly Designated a Primarily**
16 **Responsible Party**

17 VRG's responsibility for the contamination at the Roseville Site, which is derived from the
18 ASI's operation of the Site prior to 1985, is *de minimis* at best. To the extent that VRG is properly
19 characterized as a "responsible party" at all, its liability is "secondary" to the liability of the other
20 dischargers named under the CAO based on a proper consideration of the appropriate "equitable" factors
21 identified by State Board decisions for Regional Boards to consider when deciding to categorize parties
22 as PRPs and secondarily responsible parties. (*See In the Matter of Petition for Review Wenwest, Inc.*,
23 *Susan Rose, Wendy's International, and Phillips Petroleum*, WQ 92-13; *In the Matter of Petition of*
24 *Prudential Insurance of America*, California State Water Resources Control Board, Order No. WQ 87-6;
25 and *Petition of John Stuart*, Order No. WQ 86-15). If the Regional Board had properly considered the
26 required equitable factors, it would have designated VRG as a secondarily responsible party under the
27 Orders. *See*, Petition, Memorandum of Points and Authorities, § II.D., incorporated herein by reference.
28 If VRG is required to undertake all of the assigned tasks mandated in the CAO by June 6, 2008, it will

1 be forced to expend funds that should, under State Board precedent (and its contractual relationship with
2 RPMS—(see Stroud Decl. at ¶4), be borne by the primarily responsible parties—RPMS and JEM1—
3 thereby improperly and unfairly causing financial harm to VRG.

4 **3. The Public Interest Is Not Served By the Orders In Their Current Form**

5 EZ-Serve and RPMS have implemented investigation, characterization, monitoring, and
6 cleanup activities at the Site since at least 1992. VRG has obtained, and is eligible to obtain additional
7 funds for this purpose from the UST Fund. Requiring VRG to perform duplicative site investigations,
8 monitoring, sampling and remediation, without the benefit of access to the UST Funds, when RPMS is
9 likely to have its “proposed remedial system up and running shortly,” (see Paul Sanders email), is not
10 only duplicative and wasteful, but it may ultimately delay environmental remediation at the Roseville
11 Site. By way of example, VRG’s technical consultant, LFR Inc., reports that compliance with CAO § 4,
12 page 8, which requires completion of the pilot study and a modified Corrective Action Plan, that must be
13 completed by no later than June 6th, would likely not achieve the remediation goals of the Site because
14 “[a]t best the High Vacuum Dual Phase Extraction (HDVPE) is used as an *interim remedial approach*,
15 not a final remedial solution.” (See also February 12, 2008 Letter from Gallardo and Associates, Inc. to
16 Mr. Paul Sanders, Engineering Geologist, Central Valley Regional Water Quality Control Board,
17 attached hereto as Exhibit 1 and incorporated herein by reference). Rather than testing Resources Board
18 staff theories about performance levels of different treatment technologies, staff could have instead
19 required RPMS to implement a long term remedial solution, such as utilizing existing site piping and
20 installing a fixed groundwater extraction system geared towards achieving closure of the site, which are
21 recommended as more efficient and effective remediation tools.

22 Moreover, requiring VRG to perform the same tasks already undertaken by RPMS over the
23 course of several years, *during a period slightly in excess of one month*, would violate the step-by-step
24 process and consideration of economics and efficiency mandated by State Board policy. (See, e.g., State
25 Board Policy No. 92-49 at ¶ III.B, directing Regional Boards to “[c]onsider whether the burden,
26 including costs, of reports required of the discharger during the investigation and cleanup and abatement
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1 of a discharge bears a reasonable relationship to the need for the reports and the benefits to be obtained
2 from the reports.”

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4 **B. Granting The Stay Will Not Harm The Public Interest**

5 There is no indication of immediate threat to the health or the environment that justifies
6 the broad scale withholding of procedural safeguards that has taken place in this case, and the Orders do
7 not indicate why the “orderly and coordinated effort” mandate of State Board Policy No. 92-49 could
8 not be followed in issuing the Orders. The Orders indicate that contamination levels have fallen
9 significantly at the Roseville Site, and there is no indication that any beneficial use of any surface or
10 groundwater is imperiled by current conditions. The CAO’s oblique references in Sections 8-10, page 3,
11 to *potential* installation of new municipal supply wells *somewhere* within the City of Roseville *at some*
12 *future date*, and the presence of “Dry Creek” approximately 1,500 feet away, do not establish that the
13 plume of petroleum constituents within the soil and groundwater at the Roseville Site actually
14 constitutes a threat to municipal water supply or riparian beneficial uses of surface or groundwater.
15 Indeed, the Orders never state that beneficial uses are imperiled at all, nor do they state that they are
16 likely to become impaired in the near future as the result of contamination at the Site.⁶ Further, given
17 the practical, legal and technical obstacles that will prevent VRG’s timely performance of the
18 requirements of the Orders, and that may even delay further performance of these requirements by
19 RPMS, naming VRG as a Discharger responsible for implementation of requirements by dates that are
20 infeasible for VRG to meet does nothing to reduce any existing threat to human health or the
21 environment posed by contamination at the Roseville Site. Thus, there appears to have been adequate
22 time for the Assistant Executive Officer to have provided notice to VRG of the planned issuance of the

23
24 ⁶ We note the CAO’s assertion in Section 8, page 3, that petroleum constituents in the groundwater “remain well above
25 established numerical water quality objectives” is also puzzling. A cursory review of the Central Valley Basin Plan reveals
26 no established numeric water quality objectives for any of the constituents listed in Section 8, Page 3 of the CAO that are
27 directly related to, and that clearly would result in the cleanup targets specified for those constituents in the CAO. Further,
28 and Regional Board staff has not complied with necessary regulatory requirements for the setting of site-specific water
quality objectives for groundwater at the Roseville Site. Staff cannot simply pick the most conservative number they can find
from a literature search and call it a numeric water quality objective in the absence of substantial evidence in the record that
the numeric objective is needed to protect site specific beneficial uses. (See In the Matter of the Petition of Exxon Company,
California State Water Resources Control Board, Order No. WQ 85-7 at pp. 10-11 (1985)).

1 Order, to have provided VRG an opportunity for hearing by the Regional Board prior to issuance of the
2 Orders, or to have granted VRG's request for a hearing by the Board after the Orders were issued, to
3 have stayed or extended the compliance deadlines in the Orders as they pertain to VRG, and/or to have
4 granted review and reconsideration of VRG's designation as a PRP. In other words, there is currently
5 no compelling impediment to staying or extending the Orders vis-à-vis VRG until a reasonable
6 compliance schedule can be worked out and further negotiations can produce an agreement among
7 Dischargers, which VRG has offered to help the Regional Board orchestrate, regarding proper roles,
8 responsibilities, and feasible compliance schedules for a scientifically-sound and risk based cleanup of
9 the Roseville Site.

10 This is not a situation where extraordinary measures, including immediate issuance of a
11 Cleanup and Abatement Order without providing due process protections to named parties, are
12 compelled by the need to protect human health and the environment. The Roseville Site has been
13 abandoned, and investigation, remediation, characterization and cleanup activities have been ongoing
14 since at least 1992. Concentrations of petroleum residuals are declining, and with each year that passes
15 the Site becomes less of a risk. What appears to have occurred in this case is that Regional Board staff
16 became frustrated with the performance by the PRP, RPMS. (See Paul Sanders Email). Staff
17 understandably wanted a mechanism, the Orders, to increase the pace of cleanup, (*see id.*), and it was
18 appropriate for staff to elicit the assistance of other potentially responsible parties to pressure RPMS to
19 expedite the cleanup. However, it was not appropriate for the CAO to "blind side" VRG (on two
20 occasions) with issuance of the Orders without notice or response to comments, inclusion in the Orders
21 of deadlines that are impossible for VRG to meet, and with inclusion of requirements for VRG that are
22 duplicative of the efforts previously undertaken by RPMS. VRG remains willing to work with Regional
23 Board staff to ensure that a prompt and scientifically -sound and risk-based cleanup takes place at the
24 Roseville Site, but VRG's efforts to work cooperatively with Regional Board staff to avoid litigation of
25 the Orders have been rebuffed. (See Newman May 2 Letter). Frustration with the pace of cleanup does
26 not justify the issuance of unachievable Orders to a party whose relationship to the site is merely
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1 tangential, and which has no current legal ability to conduct any of the on-site investigation, monitoring,
2 sampling or cleanup tasks required under the Orders.

3 **C. The Orders Raise Substantial Questions Of Disputed Law And Fact:**

4 As previously referenced herein, VRG was blind-sided by its inclusion in the Orders as a
5 primarily responsible party for the Roseville Site on two separate occasions. (Stroud Decl. at ¶2, 5).
6 VRG was not given sufficient opportunity to comment on the contents of the Orders, and the comments
7 that it did submit to the Regional board in the November 15, 2007 Letter from Darren Stroud to Brian
8 Newman and Paul Sanders (the November 15, 2007 Letter”) addressing the October 2007 draft versions
9 of the CAO (VRG did not receive a draft version of the Monitoring and Reporting Program Order for
10 review in the fall of 2007) were for the most part ignored by Regional Board staff—notwithstanding that
11 other CAOs recently issued by the Central Valley Regional Water Quality Control Board contain nearly
12 identical provisions to those requested by VRG. (Stroud Decl. at ¶5; *see also* November 15, 2007
13 Letter). Regional Board staff did not provide any kind of response to VRG’s comments. VRG
14 personnel heard nothing else from the Regional Board staff regarding the Orders until it received a copy
15 of the final Orders on April 11, 2008. (Stroud Decl. at ¶5). Until that time, VRG reasonably concluded,
16 based on the Draft CAO, which named VRG as a secondary responsible party and prior electronic
17 correspondence with Paul Sanders, (*see* the Paul Sanders email) that to the extent it remained a
18 responsible party under the Orders, its responsibility would be “secondary” to that of RPMS and it
19 would likely be called upon to pressure RPMS to complete the cleanup in the future. (Stroud Decl. at
20 ¶5).

21 Further evidence that VRG has been deprived of adequate due process after the Orders were
22 issued arises from the fact that the State Board considers the issuance of the Orders to be an adjudicative
23 proceeding, (*see* Michael A. Lauffer, Memorandum from Chief Counsel: Summary of Regulations
24 Governing Adjudicative Proceedings Before the California Water Boards (August 2, 2006) at p. 2
25 (“Lauffer Memorandum”). Despite the adjudicative nature of the issuance of the Orders, upon receipt of
26 the final Orders without prior notice or hearing, VRG was further precluded from seeking redress from
27 the Executive Officer and the Regional Board. (*See* footnote 2, *supra*, and accompanying text). Thus,
28